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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Billed Party Preference for
0+ InterLATA Calls

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CC Docket No. 92-77

COMMENTS OF
IOWA NETWORK SERVICES, INC.

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SUMMARY

Iowa Network Services, Inc. ("INS") submits these comments in response to the Further Notice of Proposed Rulemaking, proposing the adoption of billed party preference. INS is an Iowa public utility owned by 128 independent local exchange carriers, providing centralized equal access, interexchange long distance telephone services, calling card services and enhanced voice message services to telephone subscribers in the rural areas of Iowa.

In 1990, Congress passed the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA") "to protect consumers who make interstate operator services calls from pay telephones, hotels, and other public locations against unreasonably high rates and anti-competitive practices." To implement TOCSIA, Congress directed the Commission to adopt rules requiring either the unblocking of 10XXX access at all aggregator locations, the establishment of 800 or 950 access numbers by operator service providers, or both. TOCSIA has achieved Congress's goal of ensuring that consumers are protected against unreasonably high rates for operator assisted interLATA calls, and has done so in a manner that is neither burdensome nor confusing to consumers. Nevertheless, the Commission has initiated this rulemaking proceeding to achieve those very same goals, but at a much higher cost to both providers and consumers.

The Commission claims that billed party preference will force operator service providers to redirect their competitive efforts away from aggregators and toward end users, resulting in lower prices and better service. The Commission fails to recognize that

TOCSIA already has achieved those very same results. Over 90% of telephones provide consumers with the opportunity to reach their carrier of choice, thereby avoiding the higher rates charged by some operator service providers. To ensure that less than 10% of the telephones provide the same access, the Commission need not adopt billed party preference. Rather, the Commission should, as required by TOCSIA, adopt a ceiling for operator service rates and aggregator commissions.

Billed party preference exceeds the limitations on the Commission's authority established by TOCSIA. TOCSIA provided that if the Commission determines that market forces are not securing rates and charges that are just and reasonable, the Commission shall regulate the rates of operator service providers and shall limit the amount of commissions given to aggregators by operator service providers. Based on this statutory limitation alone, the Commission should decline to implement billed party preference.

However, even if the Commission has the authority to adopt billed party preference, its costs far outweigh the professed benefits. While the Commission expects that the total cost to the industry would be \$420 million per year, INS estimates that the actual costs would be much higher. In addition, to recover these costs, rural carriers such as INS would be forced to divert funds that would otherwise have been used to upgrade their networks to provide advanced features and functions for which there is an immediate need in rural communities. And, while the Commission should not underestimate the costs involved with billed party

preference, it likewise should not ignore the costs that already have been incurred to unblock 10XXX access codes.

The Commission also overestimates the potential savings to telephone subscribers. The Commission estimates that consumers would save \$280 million per year by avoiding operator service providers with rates higher than the AT&T/MCI/Sprint average. Similarly, by eliminating commissions paid on interLATA 0+ calls, the Commission estimates that consumers would save an additional \$340 million. The Commission incorrectly assumes, however, that third-tier interexchange carriers will lower their rates significantly below the costs of service. If an interexchange carrier lowers its rates to the AT&T/MCI/Sprint average, it seems unlikely that it will lower its rates even further.

Similarly, the Commission erroneously concludes that eliminating the need for access codes will reduce customer confusion. The use of access codes, however, enables consumers to make all of their operator service calls with the knowledge that their calls will be handled by only the operator service provider with which they want to do business. Under billed party preference, not all calls will be subject to billed party preference, callers will not always be able to reach their carrier, and it will take longer to place a call.

Finally, INS proposes that the Commission allow market forces to determine where billed party preference will be deployed. Rather than mandate billed party preference by government decree,

the Commission should allow the market to determine where billed party preference is economically feasible.

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In the Matter of) CC Docket No. 92-77
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Billed Party Preference for)
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COMMENTS OF
IOWA NETWORK SERVICES, INC.

Iowa Network Services, Inc. ("INS"), by its attorney and pursuant to § 1.415(b) of the Commission's rules, respectfully submits these comments in response to the Further Notice of Proposed Rulemaking, in the above-captioned proceeding.¹

I. Introduction

INS is an Iowa public utility providing centralized equal access, interexchange long distance telephone services, calling card service and enhanced voice messaging services. INS is owned by 128 independent local exchange carriers, commonly referred to as participating telephone companies or, PTCs. INS has constructed a 1,100 mile fiber optic network and deployed a 19,000 trunk access tandem in Des Moines, Iowa, using a type of LATA equal access system (LEAS) technology and software for presubscription. INS has upgraded its network with common channel signalling facilities, including a signalling transfer point. INS provides both interLATA and intraLATA equal access to over 300 PTC exchanges, which are

¹ In re Billed Party Preference for 0+ InterLATA Calls in CC Docket No. 92-77, Further Notice of Proposed Rulemaking, 59 Fed. Reg. 30,754 (1994). The Commission extended the deadline for filing comments until August 1, 1994. In re Billed Party Preference for 0+ InterLATA Calls in CC Docket No. 92-77, Order, 59 Fed. Reg. 33,947 (1994).

located primarily in small towns and the more rural areas of Iowa. These exchanges serve more than 170,000 rural subscribers. They are among the few consumers in the entire country that presently have a choice of interexchange carriers to carry their 1+ intraLATA telephone calls, as well as their 1+ interLATA calls.

II. Procedural Background

On April 14, 1989, Bell Atlantic filed a petition requesting that the Commission begin a rulemaking proceeding on billed party preference. Under billed party preference, all interLATA 0+, 0-, calling card, collect, person-to-person and third-party billed calls would be carried by the operator services provider preselected by the party being billed for the call.

On October 9, 1991, the Commission released an Order Inviting Comments to Supplement the Record.² The Commission requested comments on the impact of certain developments in the telecommunications industry since Bell Atlantic filed its original petition. Those developments included the passage of the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA"), which directed the Commission to adopt rules requiring aggregators, including payphone providers, to ensure that consumers may access their operator service providers of choice.³ Over 24 interested parties, some jointly, filed comments in response to the

² In re the Bell Atlantic Telephone Company's Petition to Establish a Uniform Dialing Plan from Pay Telephones in RM-6723, Order Inviting Comments to Supplement the Record, 6 FCC Rcd 6141 (1991).

³ 47 U.S.C.A. § 226 (West Supp. 1994).

Commission's Order Inviting Comments to Supplement the Record. The majority opposed implementing billed party preference and saw no need for a rulemaking which could lead only to the conclusion that billed party preference should not be implemented on a universal basis. INS filed reply comments on December 23, 1991, stating that, in light of the passage of TOCSIA, billed party preference is no longer necessary and would, in fact, increase post-dialing delay and confuse customers; and prove expensive, redundant and anti-competitive.

On May 8, 1992, the Commission released a Notice of Proposed Rulemaking tentatively concluding that, in concept, billed party preference is in the public interest and proposed to mandate it.⁴ Again, when reviewed in their entirety, the comments filed in response to the Notice of Proposed Rulemaking demonstrated that billed party preference is unnecessary, that the connection between billed party preference and the purported benefits is irrational, and that TOCSIA mandates superior alternatives.

On June 6, 1994, the Commission released a Further Notice of Proposed Rulemaking proposing to mandate the implementation of billed party preference by all carriers, including small local exchange carriers and small interexchange carriers, for all 0+ and 0- interLATA calls as soon as possible.⁵ The Commission tentatively concluded that if it mandates billed party preference,

⁴ In re Billed Party Preference for 0+ InterLATA Calls in CC Docket No. 92-77, Notice of Proposed Rulemaking, 7 FCC Rcd 3027 (1992).

⁵ Further Notice of Proposed Rulemaking, slip op. ¶¶ 47, 83.

it will require the implementation of billed party preference in the service territories of all independent local exchange carriers, as well as those of the Bell Operating Companies ("BOCs").⁶ The Further Notice of Proposed Rulemaking sought further information and comment on the costs that independent local exchange carriers would incur to implement billed party preference.⁷ The Commission stated that "[w]e will mandate BPP only if we conclude that, as indicated by the current record, its benefits outweigh its costs and that these benefits cannot be achieved through alternative, less costly measures."⁸

III. Mandating Billed Party Preference Exceeds the Limitations of the Commission's Authority Established by TOCSIA

TOCSIA, which was signed into law on October 17, 1990, established a comprehensive regulatory framework governing practices in telephone service offerings of operator service providers and the call aggregators with whom they contract to provide services. The purpose of this federal statute is "to protect consumers who make interstate operator services calls from pay telephones, hotels, and other public locations against unreasonably high rates and anti-competitive practices."⁹ After carefully studying alternative access methods, Congress directed the Commission to require within a reasonable time: (A) the

⁶ Id. ¶ 49.

⁷ Id. ¶ 50.

⁸ Id. ¶ 2.

⁹ S. Rep. No. 439, 101st Cong., 2d Sess. 5, reprinted in 1990 U.S. Code Cong. & Admin. News 1577.

unblocking of 10XXX access at all aggregator locations; or (B) all operator service providers to establish an 800 or 950 access number; or (C) both (A) and (B).¹⁰ Congress concluded that "these measures should permit competitive forces to operate, forcing rates down and increasing the accountability of operator services companies to the consumer."¹¹

TOCSIA constitutes Congress' answer to guaranteeing that all callers would always reach the preferred carrier and thereby avoid the high rates charged by some operator service providers. Congress considered and rejected Bell Atlantic's request that Congress mandate billed party preference for all payphone operators. TOCSIA expressly limited the Commission to considering three types of operator service access: 10XXX access, 800 access or 950 access. When Congress considers and rejects a proposal, the proposal is contrary to congressional intent and not one Congress found in the public interest.

If the Commission determines that market forces are not securing rates and charges that are just and reasonable, as evidenced by rate levels, costs, complaints, service quality, and other relevant factors, Congress directed the Commission to establish ceilings on the rates charged by operator service providers and to limit the amount of commissions or other

¹⁰ 47 U.S.C. § 226(e)(1); see also, S. Rep. No. 439, 101st Cong., 2d Sess. 5, reprinted in 1990 U.S. Code Cong. & Admin. News 1577, 1597.

¹¹ Id. at 1581.

compensation given to aggregators by operator service providers.

TOCSIA states:

the Commission shall, within 180 days after submission of the report required under paragraph (3)(B)(iii), complete a rulemaking proceeding pursuant to this subchapter to establish regulations for implementing the requirements of this subchapter (and paragraphs (1) and (2) of this subsection) that rates and charges for operator services be just and reasonable. Such regulations shall include limitations on the amount of commissions or any other compensation given to aggregators by providers of operator service.¹²

The Commission's final report to Congress determined that market forces are not securing rates and charges that are just and reasonable at less than 10% of the telephones.¹³ Following such a determination, TOCSIA states that the Commission "shall" regulate the rates of operator service providers and "shall" limit the amount of commissions given to aggregators by operator service providers. Congress made it clear that it "expects the FCC to act responsibly in this regard to ensure that the interests of the consumer are protected."¹⁴

By exercising these statutory responsibilities, the Commission will achieve the benefits discussed in its Further Notice of Proposed Rulemaking. The Commission seeks in this proceeding to achieve savings of \$280 million per year through lower rates for operator services and savings of \$340 million per year by

¹² 47 U.S.C.A. § 226(h)(4)(A) (West Supp. 1994).

¹³ Further Notice of Proposed Rulemaking, slip op. at n.5.

¹⁴ S. Rep. No. 439, 101st Cong., 2d Sess. 5, reprinted in 1990 U.S. Code Cong. & Admin. News 1577, 1601.

eliminating commissions.¹⁵ A ceiling on the rates charged by operator service providers will realize savings of \$280 million per year without burdening society with the costs of billed party preference. Furthermore, \$340 million per year in commissions can be eliminated, pursuant to TOCSIA, without the costs of billed party preference.

The Further Notice of Proposed Rulemaking states that billed party preference would reduce the need to regulate the rates of operator service providers more actively and also reduce the need to police compliance with TOCSIA.¹⁶ The Commission's desire to reduce regulatory costs does not provide it authority to substitute billed party preference for the regulation of rates and commissions established by TOCSIA and the Communications Act.¹⁷ The Commission has only that discretion with which Congress has empowered it.¹⁸

Section 201(b) of the Communications Act of 1934 requires that all charges for operator services must be "just and reasonable".¹⁹ Section 1 of the Communications Act requires the Commission to "execute and enforce" the provisions of TOCSIA and the Communications Act.²⁰ The Commission is bound by the means that

¹⁵ Further Notice of Proposed Rulemaking, slip op. ¶¶ 11-12.

¹⁶ Id. ¶ 16.

¹⁷ MCI Telecommunications Corp. v. American Tel. & Tel. Company, 62 U.S.L.W. 4527, 4532 (U.S. June 17, 1994) (No. 93-356).

¹⁸ Burlington Truck Lines, Inc. v. U.S., 83 S.Ct. 239, 245 (1962).

¹⁹ 47 U.S.C. § 201(b).

²⁰ 47 U.S.C. § 151.

Congress has selected, deemed appropriate, and prescribed through its enactment of TOCSIA.²¹ It may not introduce a whole new regime of regulation, mandatory billed party preference, in lieu of the regulation of rates and commissions that Congress established.²²

IV. The Commission's Costs/Benefit Analysis is Arbitrary, Capricious and Irrational

The Commission's tentative conclusion that independent local exchange carriers will not incur unreasonable costs or face an unreasonable burden to implement billed party preference is erroneous.²³ INS estimates that implementing billed party preference will cost it approximately \$500,000 annually. This equates to an increase of approximately \$.25 to \$.30 per operator handled message. According to INS' analysis, each of the 128 independent local exchange carriers connected to INS' network would also be burdened with substantial costs in addition to this amount incurred by INS if billed party preference was mandated.

The Commission expects the total cost to the industry to implement billed party preference to amount to \$420 million per year.²⁴ This figure understates the real cost to society. This amount does not recognize any costs that would be incurred by cellular carriers and other wireless service providers, such as personal communications services providers, to implement billed

²¹ MCI Telecommunications Corp. v. AT&T, 62 U.S.L.W. at 4531 (U.S. June 17, 1994).

²² Id. at 17.

²³ Further Notice of Proposed Rulemaking, slip op. ¶ 49.

²⁴ Id. ¶ 20.

party preference. While the Commission estimated the non-recurring costs for operator services providers, its analysis excluded any annual recurring expenses they may incur. Furthermore, the Commission's analysis excludes the additional overhead that would be created by billed party preference.

To the costs of billed party preference, the Commission must add the enormous sums that have been spent to unblock 10XXX access codes and for AT&T to establish an 800 access code. Billed party preference will result in the waste of these expenditures if, as the Commission assumes, it causes consumers to dial 0+ in lieu of access codes.²⁵

While INS has demonstrated its commitment to making advanced network features available in small towns and rural areas, billed party preference would waste scarce resources that rural telephone companies need to upgrade their networks to provide real benefits to society. This concern is shared by Commissioner Quello who stated that "because the record does not suggest other uses for the BPP software, I am concerned that other more useful network upgrades could be delayed or not developed and deployed at all if we mandate BPP."²⁶

Any increased financial burden on telecommunications users will fall extremely hard on the customers served by INS. These customers are located primarily in small communities with lower

²⁵ Id. ¶ 58.

²⁶ Further Notice of Proposed Rulemaking (separate statement of Commissioner James H. Quello).

annual incomes. Many are farmers and small businesses who are very conscious of the need to weigh any increased costs of doing business against the benefits received.

The Commission must consider alternatives to billed party preference that minimize the economic impact on small entities.²⁷ Deficiencies in this regard can, of course, be grounds for reversal.²⁸

The record demonstrates that the use of access codes is a superior alternative to billed party preference. As the Commission stated:

"Based on the evidence before us, we now conclude that universal 10XXX access should be our long-term goal because it is the most efficient access method for consumers to use in reaching their preferred operator service providers."²⁹

In its final report to Congress, the Commission concluded:

"We found that over 90% of telephones complied with our TOCSIA consumer protection requirements. We concluded that these requirements were effective in providing consumers the opportunity to reach their carrier of choice through access codes and thereby avoid the high rates charged by some OSPs."³⁰

TOCSIA and the Commission's implementing rules have proven effective in fostering competition that benefits end users.

²⁷ Regulatory Flexibility Act, 5 U.S.C.A. § 604(a)(3) (West Supp. 1994).

²⁸ Thompson v. Clark, 741 F.2d 401, 408 (D.C. Cir. 1984).

²⁹ Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 91-35, 6 FCC Rcd 4736, ¶ 5 (1991), modified on recon., Order on Reconsideration, 7 FCC Rcd 4355 (1992).

³⁰ Further Notice of Proposed Rulemaking, slip op. at n.5.

Consumers who desire an alternative to operator service providers with higher rates are increasingly using access code to dial around those operator service providers. By the FCC's own estimates, between 1991 and 1997, the combined market share of third-tier operator service providers will drop by approximately one-third from 12.7% of the minutes for away-from-home calls to 8.5% of away-from-home minutes.³¹ The problem perceived by the Commission at less than 10% of the telephones will continue to diminish and will soon disappear without any further action by the Commission.

The Commission is apparently considering billed party preference because it believes that the impact of its current rules is taking too long to be fully realized. The Commission can, however, most efficiently ensure that consumers will pay less for operator services by regulating rates and limiting commissions as directed by TOCSIA. The Commission has provided no rational basis for substituting the ceiling on operator service rates and aggregator commissions required by TOCSIA with billed party preference.³²

By the Commission's own estimate, the regulation of rates and commissions would be less expensive than the implementation of billed party preference. On the basis of information provided by the Commission, Congress estimated that the Commission would incur annual costs of approximately \$0.7 million beginning in 1993 to

³¹ Id. at n.24.

³² California v. FCC, 905 F.2d 1217, 1236-1238 (9th Cir. 1990).

conduct annual rate review proceedings.³³ By contrast, the Commission estimates that billed party preference would cost approximately \$420 million per year.³⁴

The Commission invited parties to describe with specificity alternatives for achieving some or all of the benefits that billed party preference would provide.³⁵ Regulations in virtually all states describe with specificity alternatives that provide all the purported benefits of billed party preference identified by the Commission. For example, Iowa statutes require the rates for alternative operator services to be regulated pursuant to tariffs filed with the Iowa State Utilities Board and prohibits local exchange carriers from billing and collecting charges for untariffed alternative operator services.³⁶ The Iowa State Utilities Board also requires operator service providers to submit periodic fully-distributed cost studies if their rates exceed a ceiling.³⁷ Rate ceilings, limitations on commissions, and fully-distributed cost studies are the types of regulations that Congress expects the Commission to adopt pursuant to TOCSIA.³⁸

³³ S. Rep. No. 439, 101st Cong., 2d Sess. 5, reprinted in 1990 U.S. Code Cong. & Admin. News 1577, 1583.

³⁴ Further Notice of Proposed Rulemaking, slip op. ¶ 36.

³⁵ Id. ¶ 38.

³⁶ Iowa Code § 476.91.

³⁷ Iowa Admin. Code r. 199-22.13 (1992).

³⁸ 47 U.S.C.A. § 226(h)(4) (West Supp. 1994).

V. The Purported Benefits Identified By the Commission Lend No Support to Its Conclusion that the Benefits of Billed Party Preference Outweigh Its Costs

The Further Notice of Proposed Rulemaking professed three benefits of billed party preference. First, the Commission states that it would facilitate access to the telephone network by simplifying calling card, collect, and third-party billed calls.³⁹ Second, the Commission believes that billed party preference will lead operator service providers to refocus their competitive energies on serving end users rather than paying commissions for the 0+ traffic from public phones.⁴⁰ Third, according to the Commission, it would enable at least some of AT&T's competitors to compete more effectively for customers who prefer not to use access codes.⁴¹

A. The Commission Erroneously Quantified the Purported Benefits of Billed Party Preference.

The Commission estimated that the first two purported benefits could save consumers approximately \$620 million annually. With respect to the first purported benefit, the Commission estimated that consumers would save approximately \$280 million per year by avoiding operator service providers with rates higher than the AT&T/MCI/Sprint average.⁴² The second benefit, according to the Commission, would yield savings to consumers of approximately \$340

³⁹ Further Notice of Proposed Rulemaking, slip op. ¶ 9.

⁴⁰ Id.

⁴¹ Id.

⁴² Id. ¶ 11.

million per year by eliminating commissions paid on interLATA 0+ calls.⁴³

By its own analysis, the Commission's estimate of these savings is overstated by at least \$148.57 million per year. The Commission's analysis assumes that the FCC can require billed party preference for intrastate interLATA calls. If intrastate interLATA calls are removed from the Commission's analysis, the savings that the Commission anticipates from lower operator service rates would be reduced by \$86.69 million per year and the savings that it expects from the elimination of commissions would be reduced by \$61.88 million per year.

The Commission lacks the jurisdiction to impose billed party preference on intrastate, interLATA calls. The Communications Act of 1934 establishes a system of dual state and federal regulation of telecommunications. It delineates a strict separation between interstate and intrastate jurisdiction. The Communications Act denies the Commission authority over intrastate communications, specifically, providing in § 2(b)(1) in pertinent part:

"nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier"⁴⁴

The Supreme Court has concluded that "this provision fences off from FCC reach regulation of intrastate matters - indeed, including

⁴³ Id. ¶ 12.

⁴⁴ 47 U.S.C.A. § 152(b)(1) (West Supp. 1994).

matters 'in connection with' intrastate service."⁴⁵ Services may be regulated by the Commission only to the extent of their interstate use.⁴⁶

The Commission is confident that billed party preference will be implemented for both interstate and intrastate interLATA traffic.⁴⁷ Speculation and unsupported assumptions do not form the basis for reasoned decisionmaking.⁴⁸ New York and at least 4 Midwest state regulators opposed the imposition of billed party preference on intrastate calls.⁴⁹

The Commission's analysis also double counts the savings that may be realized from lower operator service rates. The Commission assumes that consumers will realize savings from lower rates in two ways. First, that \$280 million per year will be realized if operator service providers lower their rates to the AT&T/MCI/Sprint average. Second, that third-tier interexchange carriers would reduce their rates by another \$340 million per year if their costs decreased by this much due to lower commissions paid to premises owners and payphone providers on 0+ calls.

The \$280 million figure is being counted twice since it is speculative at best to assume that third-tier interexchange

⁴⁵ Louisiana Public Serv. Comm'n v. FCC, 106 S.Ct. 1890, 1899 (1986).

⁴⁶ National Ass'n of Regulatory Util. Comm'rs v. FCC, 746 F.2d 1492, 1498 (D.C. Cir. 1984).

⁴⁷ Further Notice of Proposed Rulemaking, slip op. ¶ 60.

⁴⁸ California v. FCC, 905 F.2d at 1235.

⁴⁹ Further Notice of Proposed Rulemaking, slip op. at 21.

carriers will reduce their rates significantly below the costs of service. The Commission found that "these rates are in many cases driven by higher costs - and, in particular, the higher commissions these carriers must pay to aggregators".⁵⁰ Once third-tier interexchange carriers have lowered their rates to the AT&T/MCI/Sprint average, it seems unlikely that they will lower their rates even further. Consequently, the Commission's cost/benefit analysis shows gross quantifiable savings on interstate interLATA calls for these two purported benefits of no more than \$278.12 million per year.⁵¹ These benefits are, therefore, far outweighed by the FCC's cost estimate for implementing billed party preference of \$420 million.

B. Billed Party Preference Will Not Achieve the First Purported Benefit Since it Will Increase, Rather Than Eliminate, Customer Confusion.

The Commission tentatively concluded that eliminating the need for access codes will reduce customer confusion.⁵² Furthermore, the only justification that the Commission provided for refusing to exempt small local exchange carriers from mandatory billed party preference is that "different dialing rules for different locations would confuse callers, and undermine the benefits of simplified

⁵⁰ Id. at n.5.

⁵¹ This amount is calculated by subtracting \$61.88 million, which reflects the commissions paid on intrastate interLATA 0+ traffic, from the total savings on commission payments estimated by the Commission of \$340 million.

⁵² Further Notice of Proposed Rulemaking, slip op. ¶ 10.

operator service calling."⁵³ The Commission stated that "[a]bsent nationwide availability, BPP could increase rather than decrease consumer confusion about operator service dialing rules."⁵⁴

The dialing of 10XXX, 800 and 950 access codes and 0- transfer services offer more universal and less confusing dialing patterns than would be available with billed party preference. Each of these alternatives enables callers to make all of their operator service calls with the knowledge that their calls will be handled by only the operator service provider with which they want to do business. This is not a benefit available with billed party preference.

Approximately 36.3% of all 0+ calls will not be subject to billed party preference. The Commission's analysis does not apply billed party preference to 0+ intraLATA traffic which represents 18.1% of all 0+ calls.⁵⁵ Furthermore, only state regulators have the authority to mandate billed party preference for intrastate interLATA calls, which represent another 18.2% of all 0+ calls.⁵⁶

With billed party preference, callers would sometimes be able to reach their carrier by dialing 0+, but at other times, they would have to dial an access code. Most callers do not know whether their calls will cross LATA boundaries and, therefore, would have no way of knowing which carrier would receive their call

⁵³ Id. ¶ 49.

⁵⁴ Id. ¶ 37.

⁵⁵ Id. ¶ 19.

⁵⁶ See infra pp. 14-15.

if they dialed on a 0+ basis. Thus, callers would experience confusion and, ultimately, are likely to continue to employ only a 10XXX, 800 or 950 access code to reach their preferred carrier.

Mandating billed party preference for interstate calls will not eliminate different dialing arrangements for operator service calling for intrastate calls. With billed party preference in effect for only interstate calls, customers placing 0+ intrastate calls may incorrectly believe that the same procedures are in place for these calls. Rather than dialing around a higher operator service provider, they may have a false sense of security and end up paying a higher rate than they would otherwise pay. To ensure that they place their calls with their carrier of choice, customers may elect to continue to dial the access code of the carrier of their choice.

Other aspects of billed party preference will also cause greater confusion. The balloting procedures proposed by the Commission may cause anxiety for many consumers.⁵⁷ Furthermore, billed party preference requires secondary carrier arrangements which will further aggravate this confusion.⁵⁸ Calling card customers of regional interexchange carriers cannot rely on billed party preference to reach their chosen carrier from all locations in the country.

Carriers such as INS do not possess nationwide origination capabilities. With billed party preference, customers would expect

⁵⁷ Further Notice of Proposed Rulemaking, slip op. ¶ 66.

⁵⁸ Id. ¶ 68.

such service, and not understand why they could not reach their preferred carrier. Customers of regional interexchange carriers would sometimes be able to reach their carrier by dialing 0+, but at other times, they would have to dial the 800 access code. Thus, the customers of a regional interexchange carrier would experience confusion, and, ultimately, are likely to continue to employ only the 800 access code to reach their preferred carrier. The regional interexchange carrier would pay for billed party preference but derive little, if any, benefit from it.

The Commission also has not attempted to quantify any alleged increased efficiency achieved by dialing 0+ rather than 10XXX. It merely asserts "that BPP would decrease the time it takes to dial a call by eliminating the need for access codes."⁵⁹ The Further Notice of Proposed Rulemaking does not provide a traditional cost/benefit analysis. A traditional analysis would weigh the costs associated with deployment of capital for new technology against the savings that would be realized by increasing efficiency.

The Commission's tentative conclusion that billed party preference should not materially degrade the quality of operator services runs counter to the evidence before it.⁶⁰ Line information data base queries can take up to 5 seconds before timing out, while the access time for dialing a 10XXX call is only

⁵⁹ Id. ¶ 31.

⁶⁰ Id.